

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

JONATHAN A. BLOOM,

Plaintiff,

v.

Civil No. 5:16-cv-121

ALEX AZAR,
Secretary of the U.S. Department of Health
and Social Services,

Defendant.

DR. BLOOM’S REPLY RE: NOTICE OF SUBSEQUENT AUTHORITY

Dr. Bloom replies to the Secretary’s claim that the subsequent authority relates to the issue of “substantial justification.” Opp. at 1-2. In fact, as Dr. Bloom noted in his papers, the subsequent authority relates to the issue of deterrence. The subsequent authority demonstrates that the negative decision from this Court (as well as two other District Courts), more than 40 Administrative Law Judges and the Secretary’s own Civil Remedies Division have not deterred the Secretary from continuing to deny continuous glucose monitor (“CGM”) claims on the grounds that a CGM is not “primarily and customarily used for a medical purpose.” As noted in Dr. Bloom’s papers, one purpose of an Equal Access to Justice Act (“EAJA”) award is to *prospectively* deter unreasonable government action. Thus, the continued negative decisions by the Secretary on this grounds (regardless of the beneficiary) illustrates that an EAJA award is necessary to prospectively deter the Secretary.

Moreover, the Secretary’s Opposition brief appears to attempt to foist the burden of preventing unreasonable action onto individual beneficiaries. That is both backwards and a

demonstration of why an EAJA award is necessary. Apparently, only an EAJA award has any prospect of deterring the Secretary.

Dated at Burlington, Vermont this 7th day of June, 2018.

JONATHAN A. BLOOM

By: /s/ Debra M. Parrish
Debra M. Parrish, Esq. (*pro hac vice*)
Bridget M. Noonan, Esq. (*pro hac vice*)
PARRISH LAW OFFICES
788 Washington Road
Pittsburgh, PA 15228
debbie@dparrishlaw.com
bridget@dparrishlaw.com

By: /s/ Craig S. Nolan
Craig S. Nolan, Esq.
SHEEHEY FURLONG & BEHM P.C.
30 Main Street, 6th Floor
P.O. Box 66
Burlington, VT 05402-0066
(802) 864-9891
cnolan@sheeheyvt.com

CERTIFICATE OF CONFERENCE

The signator above hereby certifies that counsel for Dr. Bloom (Mr. Pistorino) conferred in good faith with counsel for the Secretary (Ms. Renaldo) in an effort agree or narrow the issues and agreement was not reached.

By: /s/ Debra M. Parrish
Debra M. Parrish, Esq. (*pro hac vice*)
PARRISH LAW OFFICES
788 Washington Road
Pittsburgh, PA 15228
debbie@dparrishlaw.com

CERTIFICATE OF SERVICE

I, Craig S. Nolan, counsel for Jonathan A. Bloom, do hereby certify that on June 7, 2018,
I electronically filed with the Clerk of Court the following document:

DR. BLOOM'S REPLY RE: NOTICE OF SUBSEQUENT AUTHORITY

using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice
of Electronic Filing (NEF) to the following NEF parties:

Melissa A.D. Ronaldo, Esq.
Assistant United States Attorney
P.O. Box 570
Burlington, VT 05401
(802) 951-6725
Melissa.Ronaldo@usdoj.gov

Dated at Burlington, Vermont this 7th day of June, 2018.

By: /s/ Craig S. Nolan
Craig S. Nolan, Esq.
SHEEHEY FURLONG & BEHM P.C.
30 Main Street, 6th Floor
P.O. Box 66
Burlington, VT 05402-0066
(802) 864-9891
cnolan@sheeheyvt.com